



6712-01

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before **[INSERT DATE 30 DAYS FROM PUBLICATION IN FEDERAL REGISTER]**. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202-395-5167, or via email Nicholas_A._Fraser@omb.eop.gov; and to Cathy Williams, FCC, via email PRA@fcc.gov <<mailto:PRA@fcc.gov>> and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the "Supplementary Information" section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418-2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <<http://www.reginfo.gov/public/do/PRAMain>>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of

this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0888.

Title: Section 1.221, Notice of hearing; appearances; Section 1.229 Motions to enlarge, change, or delete issues; Section 1.248 Prehearing conferences; hearing conferences; Section 76.7, Petition Procedures; Section 76.9, Confidentiality of Proprietary Information; Section 76.61, Dispute Concerning Carriage; Section 76.914, Revocation of Certification; Section 76.1001, Unfair Practices; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 668 respondents; 668 responses.

Estimated Time per Response: 6.1 to 90.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i), 303(r), and 616 of the Communications Act of 1934, as amended.

Total Annual Burden: 32,264 hours.

Total Annual Cost: \$2,705,400.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the Commission must file a petition pursuant to the pleading requirements in Section 76.7 and use the method described in Sections 0.459 and 76.9 to demonstrate that confidentiality is warranted.

Needs and Uses: On August 1, 2011, the Commission adopted a Second Report and Order, Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage, MB Docket No. 07-42, FCC 11-119. In the Second Report and Order, the Commission took initial steps to improve the procedures for addressing program carriage complaints by: (i) Codifying in the Commission's rules what a program carriage complainant must demonstrate in its complaint to establish a prima facie case of a program carriage violation; (ii) providing the defendant with 60 days (rather than the current 30 days) to file an answer to a program carriage complaint; (iii) establishing deadlines for action by the Media Bureau and Administrative Law Judges ("ALJ") when acting on program carriage complaints; and (iv) establishing

procedures for the Media Bureau's consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract.

The following rule sections contain new or revised information collection requirements that the Commission is seeking approval for from the Office of Management and Budget (OMB):

47 CFR 1.221(h) requires that, in a program carriage complaint proceeding filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, each party, in person or by attorney, shall file a written appearance within five calendar days after the party informs the Chief Administrative Law Judge that it elects not to pursue alternative dispute resolution pursuant to Section 76.7(g)(2) or, if the parties have mutually elected to pursue alternative dispute resolution pursuant to Section 76.7(g)(2), within five calendar days after the parties inform the Chief Administrative Law Judge that they have failed to resolve their dispute through alternative dispute resolution. The written appearance shall state that the party will appear on the date fixed for hearing and present evidence on the issues specified in the hearing designation order.

47 CFR 1.229(b)(3) requires that, in a program carriage complaint proceeding filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, a motion to enlarge, change, or delete issues shall be filed within 15 calendar days after the deadline for submitting written appearances pursuant to Section 1.221(h), except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the Federal Register.

47 CFR 1.229(b)(4) provides that any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), (b)(2), and (b)(3) of 47 CFR Section 1.229, shall set forth the reason why it was not possible to file the motion within the prescribed period.

47 CFR 1.248(a) provides that the initial prehearing conference as directed by the Commission shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to Section 1.221(h) or within such

shorter or longer period as the Commission may allow on motion or notice consistent with the public interest.

47 CFR 1.248(b) provides that the initial prehearing conference as directed by the presiding officer shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to Section 1.221(h) or within such shorter or longer period as the presiding officer may allow on motion or notice consistent with the public interest.

47 CFR 76.7(g)(2) provides that, in a proceeding initiated pursuant to Section 76.7 that is referred to an administrative law judge, the parties may elect to resolve the dispute through alternative dispute resolution procedures, or may proceed with an adjudicatory hearing, provided that the election shall be submitted in writing to the Commission and the Chief Administrative Law Judge.

47 CFR 76.1302(c)(1) provides that a program carriage complaint filed pursuant to Section 76.1302 must contain the following: whether the complainant is a multichannel

video programming distributor or video programming vendor, and, in the case of a multichannel video programming distributor, identify the type of multichannel video programming distributor, the address and telephone number of the complainant, what type of multichannel video programming distributor the defendant is, and the address and telephone number of each defendant.

47 CFR 76.1302(d) sets forth the evidence that a program carriage complaint filed pursuant to Section 76.1302 must contain in order to establish a prima facie case of a violation of Section 76.1301.

47 CFR 76.1302(e)(1) provides that a multichannel video programming distributor upon whom a program carriage complaint filed pursuant to Section 76.1302 is served shall answer within sixty (60) days of service of the complaint, unless otherwise directed by the Commission.

47 CFR 76.1302(k) permits a program carriage complainant seeking renewal of an existing programming contract to file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint, to which the defendant will have the opportunity to respond within 10 days of service of the petition, unless otherwise directed by the Commission. To allow for sufficient time to consider the petition for temporary

standstill prior to the expiration of the existing programming contract, the petition for temporary standstill and complaint shall be filed no later than thirty (30) days prior to the expiration of the existing programming contract.

The following rule sections are also covered in this information collection but do not require additional OMB review and approval:

47 CFR 76.7. Pleadings seeking to initiate FCC action must adhere to the requirements of Section 76.6 (general pleading requirements) and Section 76.7 (initiating pleading requirements). Section 76.7 is used for numerous types of petitions and special relief petitions, including general petitions seeking special relief, waivers, enforcement, show cause, forfeiture and declaratory ruling procedures.

47 CFR 76.9. A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the FCC must file a petition pursuant to the pleading requirements in Section 76.7 and use the method described in Sections 0.459 and 76.9 to demonstrate that confidentiality is warranted. The petitions filed pursuant to this provision are contained in the existing information collection requirement and are not changed by the rule changes.

47 CFR 76.61(a) permits a local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7. Section 76.61(b) permits a qualified local noncommercial educational television station that believes a cable operator has failed to comply with the FCC's signal carriage or channel positioning requirements (Sections 76.56 through 76.57) to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7.

47 CFR 76.61(a)(1) states that whenever a local commercial television station or a qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, pursuant to Sections 76.56 and 76.57, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel.

47 CFR 76.61(a)(2) states that the cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules. If a refusal for carriage is based on the station's distance from the cable system's principal headend,

the operator's response shall include the location of such headend. If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue, in its response.

47 CFR 76.914(c) permits a cable operator seeking revocation of a franchising authority's certification to file a petition with the FCC in accordance with the procedures set forth in Section 76.7.

47 CFR 76.1001(b)(2) permits any multichannel video programming distributor to commence an adjudicatory proceeding by filing a complaint with the Commission alleging that a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor, has engaged in an unfair act involving terrestrially delivered, cable-affiliated programming, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Sections 76.1001(b)(2) and 76.1003. In program access cases involving terrestrially delivered, cable-affiliated programming, the defendant has 45 days from the date of service of the complaint to file an answer, unless otherwise directed by the Commission. A complainant

shall have the burden of proof that the defendant's alleged conduct has the purpose or effect of hindering significantly or preventing the complainant from providing satellite cable programming or satellite broadcast programming to subscribers or consumers; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, a complainant alleging that a terrestrial cable programming vendor has engaged in discrimination shall have the burden of proof that the terrestrial cable programming vendor is wholly owned by, controlled by, or under common control with a cable operator or cable operators, satellite cable programming vendor or vendors in which a cable operator has an attributable interest, or satellite broadcast programming vendor or vendors; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, a complainant that wants a currently pending complaint involving terrestrially delivered, cable-affiliated programming considered under the rules must submit a supplemental filing alleging that the defendant has engaged in an unfair act after the effective date of the rules. In such case, the complaint and supplement will be considered pursuant to the rules and the defendant will have an opportunity to answer the supplemental filing, as set forth in the rules.

47 CFR 76.1003(a) permits any multichannel video programming distributor (MVPD) aggrieved by conduct that it believes constitutes a violation of the FCC's competitive access to cable programming rules to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed

and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1003.

47 CFR 76.1003(b) requires any aggrieved MVPD intending to file a complaint under this section to first notify the potential defendant cable operator, and/or the potential defendant satellite cable programming vendor or satellite broadcast programming vendor, that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in Sections 76.1001 or 76.1002 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the nature of the potential complainant. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing complaint with the Commission.

47 CFR 76.1003(c) describes the required contents of a program access complaint, in addition to the requirements of Section 76.7 of this part.

47 CFR 76.1003(c)(3) requires a program access complaint to contain evidence that the complainant competes with the defendant cable operator, or with a multichannel video programming distributor that is a customer of the defendant satellite cable programming or satellite broadcast programming vendor or a terrestrial cable programming vendor alleged to have engaged in conduct described in Section 76.1001(b)(1).

47 CFR 76.1003(d) states that, in a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim.

47 CFR 76.1003(e)(1) requires a cable operator, satellite cable programming vendor, or satellite broadcast programming vendor that expressly references and relies upon a document in asserting a defense to a program access complaint filed pursuant to Section 76.1003 or in responding to a material allegation in a program access complaint filed pursuant to Section 76.1003, to include such document or documents as part of the answer. Except as otherwise provided or directed by the Commission, any cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a program access complaint is served under this section shall answer within twenty (20) days of service of the complaint.

47 CFR 76.1003(e)(2) requires an answer to an exclusivity complaint to provide the defendant's reasons for refusing to sell the subject programming to the complainant. In addition, the defendant may submit its programming contracts covering the area specified in the complaint with its answer to refute allegations concerning the existence of an impermissible exclusive contract. If there are no contracts governing the specified area,

the defendant shall so certify in its answer. Any contracts submitted pursuant to this provision may be protected as proprietary pursuant to Section 76.9 of this part.

47 CFR 76.1003(e)(3) requires an answer to a discrimination complaint to state the reasons for any differential in prices, terms or conditions between the complainant and its competitor, and to specify the particular justification set forth in Section 76.1002(b) of this part relied upon in support of the differential.

47 CFR 76.1003(e)(4) requires an answer to a complaint alleging an unreasonable refusal to sell programming to state the defendant's reasons for refusing to sell to the complainant, or for refusing to sell to the complainant on the same terms and conditions as complainant's competitor, and to specify why the defendant's actions are not discriminatory.

47 CFR 76.1003(f) provides that, within fifteen (15) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

47 CFR 76.1003(g) states that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three specified events occurs.

47 CFR 76.1003(h) sets forth the remedies that are available for violations of the program access rules, which include the imposition of damages, and/or the establishment of prices, terms, and conditions for the sale of programming to the aggrieved multichannel video programming distributor, as well as sanctions available under title V or any other provision of the Communications Act.

47 CFR 76.1003(j) states in addition to the general pleading and discovery rules contained in Section 76.7 of this part, parties to a program access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

47 CFR 76.1003(l) permits a program access complainant seeking renewal of an existing programming contract to file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint, to which the defendant will have the opportunity to respond within 10 days of service of the petition, unless otherwise directed by the Commission.

47 CFR Section 76.1302(a) permits any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the FCC's regulation of carriage agreements to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1302.

47 CFR 76.1302(b) states that any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in Section 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the

potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

47 CFR 76.1302(c) specifies the content of carriage agreement complaints.

47 CFR 76.1302(e) states that an answer to a program carriage complaint shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised. (This subsection has been redesignated from subsection (d) to subsection (e).)

47 CFR 76.1302(f) states that within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters. (This subsection has been redesignated from subsection (e) to subsection (f).)

47 CFR 76.1302(h) states that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three events occurs. (This subsection has been redesignated from subsection (f) to subsection (h).)

47 CFR 76.1302(j)(1) states that upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. (This subsection has been redesignated from subsection (g) to subsection (j).)

47 CFR 76.1513(a) permits any party aggrieved by conduct that it believes constitute a violation of the FCC's regulations or in section 653 of the Communications Act (47 U.S.C. 573) to commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1513.

47 CFR 76.1513(b) provides that an open video system operator may not provide in its carriage contracts with programming providers that any dispute must be submitted to arbitration, mediation, or any other alternative method for dispute resolution prior to submission of a complaint to the Commission.

47 CFR 76.1513(c) requires that any aggrieved party intending to file a complaint under this section must first notify the potential defendant open video system operator that it

intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in this part or in Section 653 of the Communications Act. The notice must be in writing and must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

47 CFR 76.1513(d) describes the contents of an open video system complaint.

47 CFR 76.1513(e) addresses answers to open video system complaints.

47 CFR 76.1513(f) states within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

47 CFR 76.1513(g) requires that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three events occurs.

47 CFR 76.1513(h) states that upon completion of the adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, the requiring carriage, awarding damages to any person denied carriage, or any combination of such sanctions. Such order shall set forth a timetable for compliance, and shall become effective upon release.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. ??-????? Filed ??-??-??; 08:45 am]

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